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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY FEDRICO CARRANZA,

Defendant and Appellant.

E070646

(Super.Ct.No. FWV18000910)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jon D. Ferguson,
Judge. Affirmed as modified.

Lynelle K. Hee, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Andrew
Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Pursuant to a plea agreement, defendant and appellant Larry Fedrico¹ Carranza pled guilty to grand theft of property over \$950 (Pen. Code, § 487, subd. (a)).² In return, the remaining charge was dismissed and defendant was placed on formal probation for a period of three years on various terms and conditions of probation, including serving 270 days in county jail. The court awarded defendant 38 actual days of credit for time served and allowed defendant to serve the balance of his jail time on weekend work release. Defendant's sole contention on appeal is that the trial court miscalculated his presentence custody credits because it failed to award him presentence conduct credits under section 4019.

The People agree that defendant is entitled to good conduct credits pursuant to section 4019. We conclude defendant is entitled to an award of presentence conduct credits. Therefore, we modify the order of probation to award 38 days of presentence conduct credit, and otherwise affirm the judgment as modified.

¹ Defendant's middle name is spelled in multiple ways throughout the various documents. We shall use "Larry Fedrico Carranza" throughout.

² All future statutory references are to the Penal Code unless otherwise stated.

II

FACTUAL BACKGROUND³

On February 24, 2018, defendant left a large chain department store without paying for two pairs of kids' shoes. When confronted by a loss prevention officer, defendant pulled out a chrome object, pointed it at the officer, and said he was “not about to mess with” him. The loss prevention officer believed the object to be a pocket knife. Defendant then fled the scene in a Ford Explorer.

III

DISCUSSION

The trial court did not award defendant any presentence conduct credits at the time of sentencing. The court, however, awarded defendant 38 actual days for time served. Nonetheless, the court's minute order of the sentencing hearing, the commitment memorandum, and the probation officer's report all reference 38 actual days and “PC 4019 (1/2).” During the pendency of this appeal, defendant's appellate counsel requested the trial court to award conduct credits. The trial court responded, “per minutes—Defendant was given 1/2 time [section] 4019 Credits for the 38 days he had served, at time of sentencing.” Defendant contends, and the People agree, defendant is entitled to 38 days of presentence conduct credit pursuant to section 4019. We concur and shall order the judgment to be modified accordingly.

³ The factual background is taken from the probation report.

Section 2900.5, subdivision (a), provides in pertinent part, “In all felony . . . convictions . . . when the defendant has been in custody, including, but not limited to, any time spent in a jail, . . . hospital [or] prison, . . . all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment” “For the purposes of this section, ‘term of imprisonment’ includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence” (§ 2900.5, subd. (c).) Section 2900.5, subdivision (d), provides, in pertinent part, “It is the duty of the court imposing the sentence to determine . . . the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.”

Under section 4019, a person confined in county jail following arrest and prior to imposition of sentence for a felony conviction is entitled to conduct credits “unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff” (§ 4019, subds. (a)(4), (c).) “Although the sheriff is authorized to deduct conduct credits for inmates jailed under a misdemeanor sentence or as a condition of probation, his role with respect to presentence custody credit is to provide the sentencing court with information, records and recommendations. [Citations.] The sheriff or the People have the burden to show that a defendant is not entitled to Penal Code section 4019 credits.” (*People v. Duesler* (1988) 203 Cal.App.3d 273, 276.)

Here, defendant was confined in county jail following his arrest, and prior to the imposition of sentence, for 38 days (from March 6, 2018 to April 12, 2018). The probation department's report is silent regarding any deduction of conduct credits, and the People did not argue nor did the trial court find that defendant was not entitled to credits pursuant to section 4019, subdivisions (b) and (c). In fact, the response letter from the trial court to defendant's appellate counsel and the probation department's report both indicate that defendant is entitled to conduct credits pursuant to section 4019.

Under these circumstances, we conclude the trial court erred in failing to award defendant presentence conduct credits. We also find that, contrary to the People's request, remand is unnecessary in this case.

Accordingly, we shall order the judgment modified to reflect that defendant is entitled to 38 days of conduct credit, in addition to the 38 days of actual credit already awarded, for a total of 76 days of presentence custody credit. (§ 4019, subds. (b), (c), & (f).)

IV

DISPOSITION

The judgment (order of probation) is modified to reflect that defendant is entitled to 38 days of presentence conduct credit pursuant to section 4019 in addition to the 38 days of actual credit previously awarded. The clerk of the superior court is directed to prepare an amended order of probation reflecting these additional credits and to forward a

certified copy of the amended order to the probation department. As modified, the judgment is affirmed.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.